

HOUSE BILL No. 1705

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-6; IC 31-30-1-4; IC 33-39-10; IC 33-40; IC 35-36-9; IC 35-50-2.

Synopsis: Penalties for killing law enforcement officers. Establishes the capital litigation expense fund to reimburse prosecutors for expenses incurred in prosecuting a capital case and requires the criminal justice institute to administer the fund. Provides that capital litigation expenses for employing an investigator or additional deputy prosecuting attorney are only reimbursable if the prosecuting attorney does not already employ sufficient staff to prosecute the capital case and carry out the other responsibilities of the office. Makes an annual appropriation of one hundred fifty thousand dollars (\$150,000) to fund the capital expense litigation fund. Requires the public defender council to reimburse 100% of a county's expenditures for indigent defense services in a capital case. Requires a prosecuting attorney who has reason to believe that a defendant committed murder against a law enforcement officer acting in the line of duty to seek the death penalty or a sentence of life without parole, and requires a defendant found to have committed this offense to receive either a sentence for murder or a sentence of life imprisonment without parole. Removes juvenile court jurisdiction over a child alleged to have committed the murder of a law enforcement officer acting in the line of duty. Makes other changes and conforming amendments.

Effective: July 1, 2007.

Walorski, Koch, Tincher, Neese

January 26, 2007, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1705

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-6-3, AS AMENDED BY P.L.173-2006,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 3. The institute is established to do the following:
4 (1) Evaluate state and local programs associated with:
5 (A) the prevention, detection, and solution of criminal
6 offenses;
7 (B) law enforcement; and
8 (C) the administration of criminal and juvenile justice.
9 (2) Improve and coordinate all aspects of law enforcement,
10 juvenile justice, and criminal justice in this state.
11 (3) Stimulate criminal and juvenile justice research.
12 (4) Develop new methods for the prevention and reduction of
13 crime.
14 (5) Prepare applications for funds under the Omnibus Act and the
15 Juvenile Justice Act.
16 (6) Administer victim and witness assistance funds.
17 (7) Administer the traffic safety functions assigned to the institute

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under IC 9-27-2.

(8) Compile and analyze information and disseminate the information to persons who make criminal justice decisions in this state.

(9) Serve as the criminal justice statistical analysis center for this state.

(10) Identify grants and other funds that can be used by the department of correction to carry out its responsibilities concerning sex offender registration under IC 11-8-8.

(11) Administer the application and approval process for designating an area of a consolidated or second class city as a public safety improvement area under IC 36-8-19.5.

(12) Develop and maintain a meth watch program to inform retailers and the public about illicit methamphetamine production, distribution, and use in Indiana.

(13) Administer the capital litigation expense fund.

SECTION 2. IC 5-2-6-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 19. (a) In consultation with the prosecuting attorneys council, the institute shall adopt rules under IC 4-22-2 establishing standards and eligibility requirements for the reimbursement of the office of a prosecuting attorney from the capital litigation expense fund established by IC 33-39-10-2.**

(b) Rules adopted under this section must authorize the reimbursement of expenses incurred in connection with the employment of an investigator or the appointment of an additional deputy prosecuting attorney (including a senior prosecuting attorney) only if the office of the prosecuting attorney seeking reimbursement does not, at the time of employment of the investigator or appointment of the additional deputy prosecuting attorney, employ sufficient staff to effectively prosecute the capital case and carry out the other responsibilities of the prosecuting attorney.

SECTION 3. IC 31-30-1-4, AS AMENDED BY P.L.151-2006, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4. (a) The juvenile court does not have jurisdiction over an individual for an alleged violation of:**

- (1) IC 35-42-1-1 (murder);
- (2) IC 35-42-3-2 (kidnapping);
- (3) IC 35-42-4-1 (rape);
- (4) IC 35-42-4-2 (criminal deviate conduct);
- (5) IC 35-42-5-1 (robbery) if:

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1 (A) the robbery was committed while armed with a deadly
 2 weapon; or
 3 (B) the robbery results in bodily injury or serious bodily
 4 injury;
 5 (6) IC 35-42-5-2 (carjacking);
 6 (7) IC 35-45-9-3 (criminal gang activity);
 7 (8) IC 35-45-9-4 (criminal gang intimidation);
 8 (9) IC 35-47-2-1 (carrying a handgun without a license);
 9 (10) IC 35-47-10 (children and firearms);
 10 (11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun); or
 11 (12) any offense that may be joined under IC 35-34-1-9(a)(2) with
 12 any crime listed in subdivisions (1) through (11);
 13 if the individual was at least sixteen (16) years of age at the time of the
 14 alleged violation.

15 (b) The juvenile court does not have jurisdiction for an alleged
 16 violation of manufacturing or dealing in cocaine or a narcotic drug
 17 (IC 35-48-4-1), dealing in methamphetamine (IC 35-48-4-1.1), dealing
 18 in a schedule I, II, or III controlled substance (IC 35-48-4-2), or dealing
 19 in a schedule IV controlled substance (IC 35-48-4-3), if:

20 (1) the individual has a prior unrelated conviction under
 21 IC 35-48-4-1, IC 35-48-4-1.1, IC 35-48-4-2, or IC 35-48-4-3; or
 22 (2) the individual has a prior unrelated juvenile adjudication that,
 23 if committed by an adult, would be a crime under IC 35-48-4-1,
 24 IC 35-48-4-1.1, IC 35-48-4-2, or IC 35-48-4-3;

25 and the individual was at least sixteen (16) years of age at the time of
 26 the alleged violation.

27 **(c) The juvenile court does not have jurisdiction over an**
 28 **individual who is alleged to have committed murder (IC 35-42-1-1)**
 29 **if the individual is alleged to have committed the murder of a law**
 30 **enforcement officer under the circumstances described in**
 31 **IC 35-50-2-9.5(a).**

32 ~~(c)~~ **(d)** Once an individual described in subsection (a), ~~or~~ (b), ~~or~~ (c)
 33 has been charged with any crime listed in subsection (a), ~~or~~ (b), ~~or~~ (c),
 34 the court having adult criminal jurisdiction shall retain jurisdiction over
 35 the case even if the individual pleads guilty to or is convicted of a
 36 lesser included offense. A plea of guilty to or a conviction of a lesser
 37 included offense does not vest jurisdiction in the juvenile court.

38 SECTION 4. IC 33-39-10 IS ADDED TO THE INDIANA CODE
 39 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2007]:

41 **Chapter 10. Capital Litigation Expense Fund**

42 **Sec. 1. As used in this chapter, "fund" refers to the capital**

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litigation expense fund established by section 2 of this chapter.

Sec. 2. (a) The capital litigation expense fund is established to receive appropriations, grants, donations, and other funds to reimburse the office of a prosecuting attorney for reasonable expenses incurred in prosecuting a capital case. The fund shall be administered by the criminal justice institute.

(b) The expenses of administering the fund shall be paid from money in the fund. Any interest earned on money in the fund shall be credited to the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund. However, if the amount of money in the fund at the end of a particular state fiscal year exceeds three hundred thousand dollars (\$300,000), the treasurer of state shall transfer the excess from the fund into the state general fund.

(e) One hundred fifty thousand dollars (\$150,000) is annually appropriated from the state general fund to the fund.

Sec. 3. A prosecuting attorney may submit on a quarterly basis a certified request to the criminal justice institute for reimbursement from the fund for an amount equal to one hundred percent (100%) of the prosecuting attorney's office's reasonable expenditures for prosecuting a capital case under IC 35-50-2-9 or IC 35-50-2-9.5.

Sec. 4. (a) Except as provided under section 5 or 6 of this chapter, upon certification by a prosecuting attorney and a determination by the criminal justice institute that the request complies with the standards and eligibility requirements set by the criminal justice institute, the criminal justice institute shall quarterly authorize an amount of reimbursement due to the office of the prosecuting attorney that is equal to one hundred percent (100%) of the prosecuting attorney's office's certified expenditures for prosecuting a capital case under IC 35-50-2-9 or IC 35-50-2-9.5. The criminal justice institute shall certify to the auditor of state the amount of reimbursement due to the office of a prosecuting attorney under this chapter.

(b) Upon receiving certification from the criminal justice institute, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the office of the prosecuting attorney of the amount certified.

Sec. 5. (a) As used in this section, "deputy prosecuting attorney"

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1 includes a senior prosecuting attorney.

2 (b) The office of a prosecuting attorney is entitled to
3 reimbursement for expenses incurred in connection with
4 employing an investigator or appointing an additional deputy
5 prosecuting attorney only if:

6 (1) the prosecuting attorney's ability to prosecute:

7 (A) the capital case; or

8 (B) other criminal cases;

9 would be severely hampered without the employment of an
10 investigator or the appointment of an additional deputy
11 prosecuting attorney; and

12 (2) the office of the prosecuting attorney is eligible for
13 reimbursement for expenses incurred in connection with
14 employing an investigator or appointing an additional deputy
15 prosecuting attorney under rules adopted by the criminal
16 justice institute.

17 (c) Compensation paid to a deputy prosecuting attorney
18 reimbursed under this section may not exceed:

19 (1) a per diem equal to the regular salary of a full-time
20 prosecuting attorney of the appointing circuit; and

21 (2) travel expenses and reasonable accommodation expenses
22 actually incurred.

23 (d) The total of:

24 (1) the compensation paid to a senior prosecuting attorney
25 reimbursed as an additional deputy prosecuting attorney
26 under this chapter; and

27 (2) retirement benefits that the senior prosecuting attorney is
28 receiving or entitled to receive;

29 may not exceed the minimum compensation to which a full-time
30 prosecuting attorney is entitled under IC 33-39-6-5.

31 Sec. 6. If the balance in the fund is not adequate to fully
32 reimburse all certified claims, the criminal justice institute shall
33 prorate reimbursement.

34 SECTION 5. IC 33-40-5-4 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. The commission
36 shall do the following:

37 (1) Make recommendations to the supreme court concerning
38 standards for indigent defense services provided for defendants
39 against whom the state has sought the death sentence under
40 IC 35-50-2-9 and IC 35-50-2-9.5, including the following:

41 (A) Determining indigency and eligibility for legal
42 representation.

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(B) Selection and qualifications of attorneys to represent indigent defendants at public expense.

(C) Determining conflicts of interest.

(D) Investigative, clerical, and other support services necessary to provide adequate legal representation.

(2) Adopt guidelines and standards for indigent defense services under which the counties will be eligible for reimbursement under IC 33-40-6, including the following:

(A) Determining indigency and the eligibility for legal representation.

(B) The issuance and enforcement of orders requiring the defendant to pay for the costs of court appointed legal representation under IC 33-40-3.

(C) The use and expenditure of funds in the county supplemental public defender services fund established under IC 33-40-3-1.

(D) Qualifications of attorneys to represent indigent defendants at public expense.

(E) Compensation rates for salaried, contractual, and assigned counsel.

(F) Minimum and maximum caseloads of public defender offices and contract attorneys.

(3) Make recommendations concerning the delivery of indigent defense services in Indiana.

(4) Make an annual report to the governor, the general assembly, and the supreme court on the operation of the public defense fund.

The report to the general assembly under subdivision (4) must be in an electronic format under IC 5-14-6.

SECTION 6. IC 33-40-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to ~~fifty percent (50%)~~ **one hundred percent (100%)** of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought under IC 35-50-2-9 **or IC 35-50-2-9.5.**

(b) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to forty percent (40%) of the county's expenditures for indigent defense services provided in all noncapital cases except misdemeanors.

(c) A request under this section from a county described in

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IC 33-40-7-1(3) may be limited to expenditures for indigent defense services provided by a particular division of a court.

SECTION 7. IC 33-40-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) Except as provided under section 6 of this chapter, upon certification by a county auditor and a determination by the public defender commission that the request is in compliance with the guidelines and standards set by the commission, the commission shall quarterly authorize an amount of reimbursement due the county:

- (1) that is equal to ~~fifty percent (50%)~~ **one hundred percent (100%)** of the county's certified expenditures for indigent defense services provided for a defendant against whom the death sentence is sought under IC 35-50-2-9 **or IC 35-50-2-9.5**; and
- (2) that is equal to forty percent (40%) of the county's certified expenditures for defense services provided in noncapital cases except misdemeanors.

The division of state court administration shall then certify to the auditor of state the amount of reimbursement owed to a county under this chapter.

(b) Upon receiving certification from the division of state court administration, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of the amount certified.

SECTION 8. IC 35-36-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. This chapter applies when a defendant is charged with a murder for which the state seeks a death sentence under IC 35-50-2-9 **or IC 35-50-2-9.5**.

SECTION 9. IC 35-36-9-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. If the court determines that the defendant is a mentally retarded individual under section 5 of this chapter, the part of the state's charging instrument filed under ~~IC 35-50-2-9(a)~~ **IC 35-50-2-9 or IC 35-50-2-9.5** that seeks a death sentence against the defendant shall be dismissed.

SECTION 10. IC 35-50-2-9, AS AMENDED BY P.L.1-2006, SECTION 550, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) **Except as provided in subsection (m), this section does not apply to a defendant described in section 9.5 of this chapter.** The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the

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existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

(A) Arson (IC 35-43-1-1).

(B) Burglary (IC 35-43-2-1).

(C) Child molesting (IC 35-42-4-3).

(D) Criminal deviate conduct (IC 35-42-4-2).

(E) Kidnapping (IC 35-42-3-2).

(F) Rape (IC 35-42-4-1).

(G) Robbery (IC 35-42-5-1).

(H) Carjacking (IC 35-42-5-2).

(I) Criminal gang activity (IC 35-45-9-3).

(J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure a person or damage property.

(3) The defendant committed the murder by lying in wait.

(4) The defendant who committed the murder was hired to kill.

(5) The defendant committed the murder by hiring another person to kill.

(6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, ~~or judge or law enforcement officer~~ and either:

(A) the victim was acting in the course of duty; or

(B) the murder was motivated by an act the victim performed while acting in the course of duty.

(7) The defendant has been convicted of another murder.

(8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.

(9) The defendant was:

(A) under the custody of the department of correction;

(B) under the custody of a county sheriff;

(C) on probation after receiving a sentence for the commission of a felony; or

(D) on parole;

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at the time the murder was committed.

(10) The defendant dismembered the victim.

(11) The defendant burned, mutilated, or tortured the victim while the victim was alive.

(12) The victim of the murder was less than twelve (12) years of age.

(13) The victim was a victim of any of the following offenses for which the defendant was convicted:

(A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.

(B) Kidnapping (IC 35-42-3-2).

(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the

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time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (l) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (l). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

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only if it makes the findings described in subsection (l).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for postconviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional postconviction relief. The attorney general shall answer the petition for postconviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) A person who has been sentenced to death and who has completed state postconviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death

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1 sentence if the person serves notice on the attorney general. The
 2 supreme court shall determine, with or without a hearing, whether the
 3 person has presented previously undiscovered evidence that
 4 undermines confidence in the conviction or the death sentence. If
 5 necessary, the supreme court may remand the case to the trial court for
 6 an evidentiary hearing to consider the new evidence and its effect on
 7 the person's conviction and death sentence. The supreme court may not
 8 make a determination in the person's favor nor make a decision to
 9 remand the case to the trial court for an evidentiary hearing without
 10 first providing the attorney general with an opportunity to be heard on
 11 the matter.

12 (l) Before a sentence may be imposed under this section, the jury,
 13 in a proceeding under subsection (e), or the court, in a proceeding
 14 under subsection (g), must find that:

- 15 (1) the state has proved beyond a reasonable doubt that at least
- 16 one (1) of the aggravating circumstances listed in subsection (b)
- 17 exists; and
- 18 (2) any mitigating circumstances that exist are outweighed by the
- 19 aggravating circumstance or circumstances.

20 **(m) The state may proceed against a defendant who is alleged to**
 21 **have committed murder and at least one (1) aggravating**
 22 **circumstance described in section 9.5(a) of this chapter and in**
 23 **subsection (b). If the state proceeds against a defendant who is**
 24 **alleged to have committed murder and at least one (1) aggravating**
 25 **circumstance described in section 9.5(a) of this chapter and in**
 26 **subsection (b), the procedures described in:**

- 27 (1) this section apply to the proceedings concerning the
- 28 aggravating circumstances described in subsection (b); and
- 29 (2) section 9.5 of this chapter apply to the proceedings
- 30 concerning the aggravating circumstances described in
- 31 subsection (b).

32 **Procedures described in this section and section 9.5 of this chapter**
 33 **shall be combined if they are not inconsistent with each other.**

34 SECTION 11. IC 35-50-2-9.5 IS ADDED TO THE INDIANA
 35 CODE AS A NEW SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2007]: **Sec. 9.5. (a) If the prosecuting**
 37 **attorney has reason to believe that the defendant committed**
 38 **murder and the victim was a law enforcement officer:**

- 39 (1) acting in the line of duty (including an off duty officer who
- 40 identified himself or herself as a law enforcement officer); or
- 41 (2) whose murder was motivated by an act the law
- 42 enforcement officer performed while acting in the course of

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duty;

the state shall seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging the existence of one (1) or both of these aggravating circumstances on a page separate from the rest of the charging instrument. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances described in subsection (a), and shall provide a special verdict form for these aggravating circumstances. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of

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the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) Except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (k). If the jury makes the findings described in subsection (k), the jury may not recommend that the defendant be sentenced to a term of years. If the state seeks a sentence of life imprisonment without parole and does not seek the death penalty, the jury shall recommend a sentence of life imprisonment without parole if it makes the findings described in subsection (k). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(e) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(f) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

if it makes the findings described in subsection (k). If the court makes the findings described in subsection (k), the court may not sentence the defendant to a term of years. If the state seeks a sentence of life imprisonment without parole and does not seek the death penalty, the court shall impose a sentence of life imprisonment without parole if it makes the findings described in subsection (k).

(g) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one

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(1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(h) If a person sentenced to death by a court files a petition for postconviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional postconviction relief. The attorney general shall answer the petition for postconviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(i) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

- (1) conviction or sentence was in violation of the:
 - (A) Constitution of the State of Indiana; or
 - (B) Constitution of the United States;
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:
 - (A) exceeds the maximum sentence authorized by law; or
 - (B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (g), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(j) A person who has been sentenced to death and who has completed state postconviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney

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1 general. The supreme court shall determine, with or without a
 2 hearing, whether the person has presented previously undiscovered
 3 evidence that undermines confidence in the conviction or the death
 4 sentence. If necessary, the supreme court may remand the case to
 5 the trial court for an evidentiary hearing to consider the new
 6 evidence and its effect on the person's conviction and death
 7 sentence. The supreme court may not make a determination in the
 8 person's favor nor make a decision to remand the case to the trial
 9 court for an evidentiary hearing without first providing the
 10 attorney general with an opportunity to be heard on the matter.

11 (k) Before a sentence may be imposed under this section, the
 12 jury, in a proceeding under subsection (d), or the court, in a
 13 proceeding under subsection (f), must find that the state has
 14 proved beyond a reasonable doubt that at least one (1) of the
 15 aggravating circumstances listed in subsection (a) exists.

16 (l) The state may proceed against a defendant who is alleged to
 17 have committed murder and at least one (1) aggravating
 18 circumstance described in subsection (a) and in section 9(b) of this
 19 chapter. If the state proceeds against a defendant who is alleged to
 20 have committed murder and at least one (1) aggravating
 21 circumstance described in subsection (a) and in section 9(b) of this
 22 chapter, the procedures described in:

- 23 (1) this section apply to the proceedings concerning the
- 24 aggravating circumstances described in subsection (a); and
- 25 (2) section 9 of this chapter apply to the proceedings
- 26 concerning the aggravating circumstances described in
- 27 section 9(b) of this chapter.

28 Procedures described in this section and section 9 of this chapter
 29 shall be combined if they are not inconsistent with each other.

30 SECTION 12. [EFFECTIVE JULY 1, 2007] (a) IC 33-40-6-5, as
 31 amended by this act, applies only to indigent defense services
 32 provided after June 30, 2007.

33 (b) IC 33-39-10, as added by this act, applies only to expenses of
 34 prosecuting a capital case that occur after June 30, 2007.

35 (c) IC 35-50-2-9, as amended by this act, and IC 35-50-2-9.5, as
 36 added by this act, apply only to crimes committed after June 30,
 37 2007.

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